IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3460 OF 2005

Atul Jagdish Khanna ..Petitioner

V/s.

1. Mona Atul Khanna

2. State of Maharashtra ..Respondents

Ms.Haresh Jagtiani, Senior Advocate, Mrs.Anusuya Dutt, Advocate, with Hitesh Dabhi i/by Haresh Jagtiani and Associates for the petitioner.

Ms.Minakshi Lekhi with Ms.Prachi Pandey for Respondents.

Coram : R.S.MOHITE,J

Date : 19.05.2005.

PC

1. This Writ petition has been circulated urgently on 17.5.2005 as the question involved the access to 2 children in the on going summer vacation.

2. On 8.4.2005 the Family Court addressed the said issue and passed an order, the operative portion of which is in the following terms :-

> 1. Applicant/husband to have daughters with him on 9th April 2005 from 9 a.m. to 5 p.m.
>
> 2. He is directed to collect daughter from residence of opponent at 9 a.m. and to return the daughters to her residence at 5 p.m.
>
> 3. Both parties are advised not to inter act/abuse or quarrel with each other.
>
> 4. The opponent wife is entitled to take

> the children to Dubai from 10th April and she is directed to bring the children back to Pune on 30th April, 2005.
>
> 5. Applicant husband is entitled to take the children allotted for 3 weeks in May 2005 and he is elected to bring the children back to India Pune on 24th May 2005.
>
> 6. Opponent wife is directed to handover passport of both and daughters to applicant on 9th April, 2005 when he comes

3. In accordance with this order the husband Atul Khanna spent time with his 2 daughters on 9.4.2005 from 9 a.m. to 5 a.m. He collected his daughters from the residence of the opponent wife and returned the daughters to her residence at 5 p.m. As per the order the wife was entitled to take the children to Dubai on 10.4.2005 and it was directed to bring the children back to Pune on 30.4.2005. It appears that before 30.4.2005 she returned and filed an application in the Family Court at Pune for modification of the order dated 8.4.2005. In her application she contended that the husband had not been hospitable to the children when he had taken them out on 9.10.2005. She claimed that the children are not willing to spend 3 weeks in May-2005 with the husband as contemplated by clause-5 of the order dated 8.4.2005. After hearing both the sides, the Family court passed an order below Exh.36 in Petition No.A-10/2005, holding that the husband/father was not entitled to take the daughters abroad for 3 weeks. Vide order below

Exh.29 he was directed to return the passport to the applicant.

4. This Writ petition was moved impugning the aforesaid order passed by the Family court below Exh.36 in Petition No.A-10/2005.

5. The matter was moved on 17.5.2005 and after hearing both the sides at some length, I had expressed the desire to talk to the 2 children who are both girls aged about 13 and 16 years respectively. Since the 2 girls and the mother were in Delhi, the husband agreed to pay their air fare so that they remain present today in the Court. Accordingly today at 6.00 P.M. I had a talk with the 2 minor girls by name Sneha who is aged about 16 years and Maneka who is aged about 13 years. It is a matter of fact that both the girls had been continuously with their mother for more than 7 months. Both girls expressed a view that they would not like to spend time with their father at this juncture but would re-consider the matter if the behaviour of the father towards them improved. I also interviewed respondent. She stated that she has no objection if the girls spending time with their father if they be pursuaded to do so. I further had a lengthy discussion both with the husband who stated that he loves his girls but had

been denied any reasonable access to them. He stated that when he had taken the girls on 9.5.2005, he had treated them with affection. He contended that however, the girls are continuously tutored by their mother and if he was allowed to spend some time with them, he would bring them back with his love and affection.

6. I talked to the husband father who was also present in the Court. He stated that he had a 3 bed-room house at Worli Sea Face and that he would be very glad to have his 2 grand-daughters stay with him for a period of 3 weeks. He said that his wife would also be delighted to have 2 grand children staying with them. He said that he would also not mind if his daughter-in-law i.e. respondent Mona would accompany the children and stay with them at his house. He stated that there was no need to take holiday at a foreign location or at un-known place in India, and that his son, 2 grand daughters and even the daughter in law would be welcome to stay in his house.

7. I have put the proposal made by the husband’s father to the husband and he was more than agreeable to allow the children to spend 3 weeks with their grand father i.e. his parents.

8. When I put the same proposal to the wife Mona she stated that the children may stay in the house of their grand parents but she would not stay in that house. It may be mentioned here that the wife in her written statement has stated on several occasions that she wants her husband to come back to her. In her written statement she has mentioned that it would be desirable if her husband comes back to their family. In view of this stand taken, I do not find her outright rejection of the proposal put up by the husband's father to be reasonable.

9. Prima facie my impression of the father is that he had love and affection with her daughters but in order to win over his children he requires some time. Wife Mona informed me that she had no independent income and is dependent upon the money given to her by her brother and other relatives. I find that the long term interest of the children in such circumstances may lie in their having re-approachment with their father.

10. In the circumstances, I pass the following order :-

O R D E R

1. That the petitioner will be entitled to take his

2 daughters viz.Sneha and Maneka for a period of 3 weeks from 22.5.2005 to 12.6.2005. I am told that the daughters are studying in Pune and if they are required to be taken to Pune for securing admission, he will do everything that is necessary to secure such admission and can take his daughters to Pune if so required for the said purpose.

2. The husband may stay alongwith his 2 daughters during the period of 3 weeks at his father's residence situated at Worli Seaface. The respondent Mona Khanna will also be at liberty to come and stay in the residence of the petitioner's father if she so desires. The petitioner's husband will be entitled to collect his daughters from the residence of his wife wherever she may be on 22.5.2005. He will also return her daughters to the custody of his wife by 12.6.2005 by 6.00 P.M.

3. With these directions, application stands disposed of.

4. It goes without saying that the petitioner will make every effort possible to win over his daughters affection and will treat them with tenderness love and affection.

. Parties to act on an ordinary copy of this order

duly authenticated by the Personal Secretary/Court Sheristedar of this Court as a true copy.

(R.S.MOHITE,J)